



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: J. A. Jones Management Services, Inc.

File: B-284909.5

Date: October 2, 2000

William A. Roberts III, Esq., William Lieth, Esq., Kevin J. Maynard, Esq., and Eric W. Leonard, Esq., Wiley, Rein & Fielding, for the protester.
Lars E. Anderson, Esq., and Paul N. Wengert, Esq., Venable, Baetjer and Howard;
and Thomas J. Madden, Esq., and Johana A. Reed, Esq., Venable, Baetjer, Howard & Civiletti, for Raytheon Technical Services Company, an intervenor.
Sharon A. Jenks, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated offerors' past performance is denied where record reflects that the evaluation ratings are reasonable and were arrived at under an assessment conducted in accordance with the criteria set forth in the solicitation.
 2. Selection of higher-rated, higher-priced proposal is unobjectionable where solicitation provided for best-value award with technical and past performance considerations significantly more important than price, and the agency reasonably determined that the superior past performance presented by the higher-rated proposal outweighed the associated slightly higher price.
-

DECISION

J. A. Jones Management Services, Inc. protests the Department of the Air Force's award of a contract to Raytheon Technical Services Company under request for proposals (RFP) No. F64605-99-R-0013 for base operating support services at Johnston Atoll. Jones questions the propriety of the agency's past performance evaluations and asserts that the resulting award decision lacks a rational basis.

We deny the protest.

BACKGROUND

The RFP, issued in July 1999, contemplated the award of an indefinite-quantity contract to provide base operating services, including the disposal of munitions and chemical agents, for a period of up to 7 years, including a 6-month base period and all options, at Johnston Atoll Air Force Base, a remote location in the Pacific Ocean. The solicitation advised offerors that a single contract would be awarded on the basis of the best overall value to the government, and listed the following evaluation areas in descending order of importance: past performance, technical, and price. The RFP further stated that past performance and technical, combined, would be significantly more important than price, so that the lowest-priced proposal would not necessarily receive the award. As relevant here, at section L the RFP instructed offerors to provide their experience performing on similar base operating support service contracts by listing no more than 25 contracts that the firm had performed since 1994, and to rank these contracts in order of their relevance to this solicitation's performance work statement. Offerors were further instructed to include in their description of relevant contracts specific detail regarding "why or how that effort is relevant and similar in scope and magnitude to the effort required by this solicitation." RFP § L.(2).(I).(c). Section M of the RFP specified that in assessing offerors' past performance, the agency would "focus[] on the currency and relevancy (i.e., scope and magnitude)." RFP § M.(I).(1).

Four firms submitted proposals. After reviewing the initial proposals, the Air Force conducted oral and written discussions and invited offerors to submit revised proposals. All four final proposals received a rating of acceptable with low risk in the technical evaluation area. Under the past performance factor, Jones's proposal was rated "very good" (the second-highest adjectival rating available), while Raytheon's proposal was rated "exceptional," the highest available rating. Jones's overall price of \$[deleted] was the second-lowest among the four offers, while Raytheon's \$160,630,151 was third lowest.¹ Agency Report (Apr. 6, 2000) [Agency Report I], Tab 7, Source Selection Decision (Mar. 3, 2000), at 14. The Source Selection Authority (SSA) concluded that Raytheon's exceptional/high confidence past performance rating reflected a record of substantial current and past experience providing base operating services with an exceptional level of performance, and that the benefit of this experience far outweighed the relatively small difference in price compared to any of the other offerors. The SSA therefore selected Raytheon for the award.

¹ Although the RFP required offerors to submit prices for two different possible levels of performance, (one reflecting full performance and the other reflecting a gradual reduction in force), our decision will refer only to the full-performance pricing, since the different levels do not have any impact on the protest issues.

On March 14, 2000, Jones filed a protest with our Office (B-284909.2), challenging the Air Force's best value determination and the resulting award decision; after reviewing the agency report, Jones supplemented its protest on April 17 and April 20, alleging improprieties in the agency's evaluation of Jones's past performance. During the development of the supplemental protest, the Air Force decided to take corrective action by empanelling a new performance risk assessment group (PRAG) to conduct a new past performance evaluation and to make a new best value determination. Thereupon, we dismissed Jones's protest as academic because the agency had taken corrective action.

CURRENT PROTEST

The new PRAG reviewed each offeror's past performance proposal volume, the evaluation notices and responses, and the completed past performance questionnaires. The PRAG's source selection decision document included an evaluation matrix summarizing the relevance of work performed under prior contracts as well as a narrative evaluation of the PRAG's analysis and conclusions.

Again, Raytheon's past performance was rated exceptional, and Jones's was rated very good. The SSA reviewed the PRAG's past performance evaluation report and concurred with its ratings and conclusions. After assessing past performance and technical ratings as well as price, the SSA selected Raytheon for award as the best value offeror. Agency Report (July 17, 2000) [Agency Report II] at 1. Jones received a debriefing concerning the new past performance evaluation and award on June 28 and this protest to our Office followed, challenging the new past performance evaluation and the resulting award determination.

Stating that the timely award of a contract was considered critical to the Air Force's ongoing mission on Johnston Atoll, and because an extension of the interim contract that was in effect when Jones filed this protest was not a viable option, the Air Force overrode the stay of performance under the Competition in Contracting Act, citing the best interests of the government.² See 31 U.S.C. § 3553(d)(3)(C)(i)(I) (1994).

² The Air Force and the protester both requested that our Office provide alternative dispute resolution (ADR) in the form of protest "outcome prediction" under an expedited schedule agreed to by the parties. We granted the expedited ADR request, and the agency delayed lifting the stay of performance until the ADR process was completed. The GAO attorney of record held an outcome prediction conference call on July 28, during which she explained to all of the parties why she anticipated that the protest should and would be denied, explaining in detail the facts and legal reasoning on which this prediction was based. The protester nonetheless elected not to withdraw its protest. This decision is somewhat abbreviated because the parties have already been provided with a detailed oral explanation of the reasoning underlying the conclusion that the protest is without merit.

Jones contends that the new PRAG's past performance evaluation improperly focuses on the "relative relevance" of the offerors' reference contracts, asserting that such emphasis on "relevance ratings" was neither mentioned in the RFP and source selection plan, nor in discussions with Jones. Jones also questions the best value determination, alleging that there is no rational basis upon which the agency could have concluded that Raytheon's past performance is superior to Jones's in any meaningful way that would justify paying the price premium involved.

Past Performance Evaluation

We will review an agency's evaluation of proposals to ensure that it is fair, reasonable, and consistent with the evaluation criteria stated in the solicitation and with applicable statutes and regulations. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3.

As a general matter, where the comparative merit of offerors' past performance is to be evaluated to assess the probability of successful accomplishment of the work at issue, relevance is logically encompassed by and related to the past performance factor, whether or not specifically identified in the RFP. American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49 at 10. In addition, here the RFP expressly provides that the agency's past performance assessment would focus on the currency and relevance of the information provided, and the solicitation further instructs offerors to include past performance information in sufficient detail to identify previous experience as it related to the probability of successful accomplishment of the statement of work, and directs offerors to rank the contracts listed in their proposals as references in order of their relevance to this solicitation's statement of work. Thus, assessment of the relevance of past performance was required under the RFP evaluation criteria, and indeed was specified as the focus of the past performance assessment. Jones's assertion to the contrary is directly contradicted by the solicitation evaluation criteria and is simply wrong.

Moreover, the record establishes that the agency's new evaluation is reasonable. Specifically, the record reflects a thorough agency analysis of the past performance proposals. Offerors' references were assessed under the areas of quality of service, schedule, business relations, and management of key personnel. Raytheon's performance was essentially evaluated as excellent or outstanding under the first three areas and satisfactory under the fourth. In all instances, where any performance problems were noted, Raytheon was assessed as having taken appropriate and satisfactory corrective action to resolve the problem. Agency Report II, Tab 10, Source Selection Decision (June 21, 2000), at 6. Jones was evaluated as outstanding under quality of service after taking into account its corrective action taken under its quality control program. Jones was evaluated as having various weaknesses under schedule, which was seen as raising a question whether or not it could ensure strict adherence to subcontractor monitoring and schedule performance. Under business relations, Jones was assessed as "proactive" in correcting prior deficiencies and weaknesses. Under management of key personnel,

Jones's strengths were assessed as exceeded by its weaknesses. Id. at 4-5. Thus, Jones's past performance was generally assessed less favorably than Raytheon's overall, and in all areas the PRAG noted that with one exception, Jones's contracts were of limited relevance to the contract at issue. Id.

In assessing relevance, the PRAG reviewed the top five ranked contracts submitted by each offeror. The evaluators measured the relevance of an offeror's prior contracts by using a matrix that listed the 39 areas or categories of tasks as they were identified in the RFP. The PRAG completed matrices for each offeror (indicating which of the 39 areas were included in the prior contract) based on the offeror's past performance proposal, and also had the offeror's references for the prior contracts complete the matrix. Even if a contract included an area that was only partially relevant to the RFP's areas of performance, the PRAG gave full credit under this comparison. This method of review produced the following summarization of how many of the 39 areas were performed under the prior contracts:

Relevant Requirements Completed

	Jones	Raytheon
Contract 1	37	38
Contract 2	25	38
Contract 3	15	39
Contract 4	19	38
Contract 5	16	34

Id. at 4.

The contracts were rated under an adjectival scale for relevance, based on the number of relevant requirements each one included, as shown in the following summary:

Relevance by Contract

	Jones	Raytheon
Contract 1	Extremely Relevant	Extremely Relevant
Contract 2	Somewhat Relevant	Extremely Relevant
Contract 3	Somewhat Relevant	Extremely Relevant
Contract 4	Somewhat Relevant	Extremely Relevant
Contract 5	Somewhat Relevant	Somewhat Relevant

Id. at 3.

The source selection decision reflects the Air Force's concern that the successful offeror will be responsible for the safe disposal of munitions and chemical agents

stored at Johnston Atoll and will need to support the chemical demilitarization activity through a wide range of requirements, some of which are unique to the remote location. In this regard, the agency notes that maintaining the supply of potable water, producing power and maintaining the island infrastructure (including the operational runway and flight line), providing food for the island inhabitants and providing recreational activities are crucial requirements which, if not properly performed, can seriously jeopardize the Johnston Atoll mission. Id. It is the agency's view that the best indicator of how well the work is likely to be accomplished is the offeror's past performance record.

The evaluation record and source selection decision reflect the agency's generally favorable assessment of Jones's performance under its prior contracts. However, the record also reflects the agency's substantially more favorable assessment of Raytheon's past performance on contracts that were assessed as significantly more relevant than Jones's. The agency had concerns about the fact that Jones had only performed one contract that was considered extremely relevant, as demonstrated on the matrices, above.³ Further, since Jones was not the prime contractor but only one firm among three that performed the work as a joint venture under that contract, it was not clear which work Jones had actually performed.⁴ Agency Report II, Tab 9, Past Performance Evaluation, at 11. In addition, the PRAG was reasonably concerned by several areas in which it considered Jones's past performance to be weak, including ones that were considered among the more "mission essential" areas, such as medical, food, environmental, and air terminal/airfield services. Agency Report II at 5. While Jones disagrees with these conclusions, it has not offered any persuasive rebuttal of the evidence in the record.⁵ In these

³ During a telephone conference conducted by our Office in connection with our ADR effort and in its comments on the agency report, Jones attempted to show that it could have provided evidence that it had performed a higher number of the relevant requirements under its prior contracts if it had known its past performance would be evaluated in this manner. However, even accepting Jones's allegations without further scrutiny, the number of requirements it cited would not be sufficient to raise its rating from "somewhat relevant" to "extremely relevant" for any of the four contracts for which it received that rating. Similarly, while Jones contends that the Air Force failed to conduct meaningful discussions because it did not ask Jones to address the relevance of its past performance proposal, Jones has not shown that it could have improved its rating in any significant way as a result of such discussions.

⁴ Indeed, to the extent Jones's proposal sheds any light on this question, it suggests that Jones itself performed in only eight areas as a member of the joint venture under that contract. Agency Report I, Tab 3, Jones's Past Performance Proposal, at 9-10.

⁵ In contrast, while Jones alleges that the agency overlooked a number of weaknesses in Raytheon's past performance, the agency has provided a reasonable
(continued...)

circumstances, where the solicitation involves a very complex and somewhat unique requirement and the protester has not been the prime contractor on a single contract that involves the same requirements or can be shown to be extremely similar, we find reasonable the agency's conclusion that "the evaluated contracts only give a picture of what [Jones] can do for contracts with less complex requirements than what is required" for this effort. Agency Report II, Tab 10, Source Selection Decision (June 21, 2000), at 5. In sum, the agency reasonably concluded that Raytheon offered better performance on substantially more relevant contracts than Jones.

Best Value Determination

Jones argues that Raytheon's past performance could not reasonably be considered superior to its own in any meaningful way that would justify paying the associated price premium. We find this allegation without merit.

Source selection officials are often required to make a price/technical tradeoff to determine if one proposal's technical superiority is worth the higher price associated with that proposal, and that determination properly may reflect a price/past performance tradeoff where to do so is consistent with the solicitation's evaluation scheme. Rotair Indus., Inc., B-276435.2, July 15, 1997, 97-2 CPD ¶ 17 at 3. Where, as here, the solicitation provides for award based on the best value to the government, and provides that past performance is to be considered more important than price, and the offeror with the best past performance rating does not propose the lowest price, the selection official ultimately must decide whether the higher-priced proposal represents the best value in light of the offeror's better past performance rating. Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13 at 3.

To the extent that Jones's objection to the tradeoff determination is based on its disagreement with the agency's assessment of the relative merits of the two offerors' past performance, the objection is without merit since, as explained above, the agency's assessment is reasonable and supported. As to the propriety of the extant tradeoff, the record shows that Jones's less favorably rated past performance reflected contracts that were generally smaller in scope than those that were listed for Raytheon, and on which Raytheon was more favorably rated; Jones's prior contracts averaged \$[deleted] million per year, Agency Report I, Tab 7, Source

(...continued)

rebuttal of each allegation. Agency Report II at 6-7; Contracting Officer's Supplemental Statement, July 24, 2000, at 1-4. For example, Jones alleged that the SSA had ignored weaknesses in Raytheon's past performance, such as "wastewater system problems that resulted in discharge violations"; the agency explained that the violations were caused by an undersized wastewater system (in place when Raytheon became the contractor) and heavy rains, and that Raytheon in fact designed the project used to fix the problem. Id. at 1.

Selection Decision (March 3, 2000), at 8, while Raytheon's contracts averaged \$150.5 million per year. Id. at 9. Moreover, Raytheon's most relevant contract was a near-perfect match for this procurement: it was a 5-year effort performed for the Navy at Johnston Atoll, which included all but one of the current requirements. Agency Report II, Tab 9, Past Performance Evaluation, at 17. In addition, as shown on the matrices above, four of Raytheon's most recent five contracts included at least 38 of the 39 areas of performance required here. As provided for in the RFP, the SSA equated Raytheon's higher past performance rating with a reduced level of risk for successful performance of this contract and reasonably concluded that this consideration offset Raytheon's higher price. In these circumstances, we see no basis to object to the SSA's conclusion that Raytheon's higher-rated and slightly higher-priced proposal represented the best value to the government.⁶ See AdvanChip Corp., B-282571, July 29, 1999, 99-2 CPD ¶ 35 at 4.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

⁶ As we explained during the ADR conference, we consider the relative price difference between the two proposals—approximately \$[deleted] over the full term of the \$160 million contract—to be sufficiently small (less than 6 percent) that the agency had considerable discretion in determining that it was outweighed by a meaningfully superior past performance rating.